Choice is Never Having to Say you are Sorry: How Deregulation is Working for Low-Income Programs[1]

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INTRODUCTION: UPSIDE/DOWNSIDE

California, the source of many innovations and social reforms of all kinds, led the way in the experiment of state deregulation of electrical energy supply in 1996.[2] As is generally known today, the California experiment did not work out very well; however, it did set the pattern for negotiating electricity deregulation. As a part of this pattern, all kinds of advocacy and interest groups generally take part in giving an "OK" for restructuring to proceed. These groups are many and diverse. They range from Large Industrials (local large industrials having one set of interests, multi-state and multinational industrials have somewhat different interest) to the Renewables and Clean Air people, to Free Market advocates. A few of the groups that came to the table in the deregulation states are primarily interested in providing continuity of service at affordable rates to low-income customers and families. In the American system of public utility regulation, moments of reform are moments when many interests can be advanced in order to create a sense of unanimity surrounding an institutional change.[3] In many deregulation states, low-income families did receive a little piece of the pie. It is good the consumer advocates, utilities, and regulators won these pieces for low-income families because the deregulation did not perform for them at all as promised.

Note, however, these little pieces came from negotiation within the regulatory context. No real advantage to low-income families comes from deregulation and "the market." In fact, all of the market features introduced through deregulation tend to work against low-income utility customers. However, during negotiation (or what some prefer to call "interest intermediation") low-income advocates were able to secure non-market features as a kind of non-market attachment to the market reforms. These features work for low-income families. For example:

(1) In Massachusetts a low-income rate discount was established and is now being intensively promoted by the utilities and by the state commission so that the benefits will more closely match the intent of serving all low-income customers.

(2) In Pennsylvania, a state with many kinds of low-income programs, funding and enrollment size of programs was dramatically ramped up and responsibility of utilities for maintaining at least the previous level of low-income program assistance was written into law in the deregulation legislation.

(3) In Oregon, a public benefits fund was established with a portion of revenue designated for low-income payment assistance. This fund supplements LIHEAP with in-state non-federal resources.[4]

These kinds of negotiated results are the upside of deregulation. Not one is a market related feature and not one is driven by market dynamics. Each required an opening that created a strong interest among diverse parties in reaching accommodations. Deregulation was such an occasion. That is the sense in which deregulation provided some low-income benefits: the benefits stem not in any way from "the market," but from the occasion.

But why didn't the promises of deregulation come through for low-income families? To answer this question, this paper looks at the downside of deregulation. At the end of paper, some ideas are presented on how to provide fair treatment for low-income families in a deregulated environment.

THE DOWNSIDE OF THE MARKET REFORM

You had to know something was wrong when deregulation was arriving. The cue was the kind of talk with which it was heralded and with which its specific features were introduced. Deregulation was never presented as a thoughtful reform that could win on its merits. The system it displaced was much more carefully thought through, since its essence was planning. It was an open system with moderately strong regulators and highly evolved planning tools. It incorporated a strong free speech component; a table opens to all parties, and a strong evaluation component to provide feedback and correction within a cycle of planning, implementation, and evaluation.

Deregulation was presented under the banner of the free market - with which, as discussed below, it had nothing in common. Because the planning system was both working and logical, in each state there was a fair amount of bad faith in promoting the market reform. In some states, evaluations were cancelled or deliberately misinterpreted. For example, a set of DSM programs designed to produce kWh savings would be assessed based on their ability to produce kW, and the numerical result would be used to help shut down DSM as not working. But in all states, the market language was grossly and inappropriately extended from the small portions of the market within which it might possibly have some validity to cover every aspect of energy services. Simply put, it was "Planning Bad!"; "Free Market Good!" and "Regulation Bad!"; "Market Good!" Notably, the market reform dispensed with existing measurement systems and did not invite hard measurement of its own performance against its promises. It was based on faith without respect to the community and material market relationships. It did not provide for real evaluation. Why would it if "markets are the answer," and market behavior is assumed not to create problems.

(1) Violent Language and Exaggerated Claims. A keynote of deregulation was the free use both threatening language and extreme exaggeration in promoting market reform. Some of this kind of talk might have been seen as necessary to overcome regulatory systems and planning systems that had substantial and widespread support. In point of fact, these systems had shown the ability to correct monopoly excesses of a prior era through the institution of systematic Demand Side Management and Least Cost Utility Planning. The track record was good and it was accompanied by hard measurement with rigorous evaluation and open planning built-in through these two institutional practices (Demand Side Management and Least Cost Utility Planning).

These institutions were currently doing a good job of providing guaranteed security of energy at least cost. The market reform was to replace these community oriented institutions with privatized market behavior. That markets could do it better was put forward as an article of faith. In the future, when ideologues claim that advocates of careful planning and social welfare should "get out of the way or become road kill," we will hopefully be quicker to organize to defend guided markets. The language of violence is an indicator of a lack of content.

(2) Faith in Markets and Suppression of Measurement and Planning. A second key feature of deregulation was the absence of serious evaluation to accompany the experiments. There were early pilots and some of these were accompanied by reports that were called evaluations. However, none of the reports was not primarily evaluative in nature, but were rather promotional exercises with some measurement included. To say another way, although evaluators were involved in some of these studies, the evaluators were not commissioned to practice their full craft. They could not frame evaluations that could call the market reforms to account or question whether or not the reforms made any sense at all in terms of their material results.[5] Not one the major state experiments with deregulation and market reform incorporated systematic independent third-party evaluation. Where skilled evaluators were employed in deregulation experiments they were constrained to various kinds of survey research and other ancillary analysis that was fundamentally promotional in nature and that could not frame and carry though on analysis the might question deregulation. The lack of serious built-in independent third-party evaluation is an indicator that faith or belief is guiding a reform, rather than a focus on materially solving problems using critical analysis and measurement of results.

(3) The Free Market Illusion. A third key feature was the bold polemic "markets are the answer." Of course, markets can be an answer in certain situations. But unless they work similarly to the textbook ideal of a "free market," markets easily become severely antisocial. When markets do not assume a "free market" approximation, as power markets do not, they must be guided or they are likely to damage families, businesses, and institutions.[6] The model put forward was the free market. However, there was no invitation to introduce and carefully consider among all parties the contextual requirements of free markets. There was no invitation to show that most of the situations created by weakening regulation would unleash market behavior that was not that of a free market. Neither real markets nor real infrastructure were taken into account.

Originally, the "market" was to magically produce "choice" as well as "value" and "lower price." As the reform went forward and the free market illusion wore thin, "choice" was replaced by "forced choice" or involuntary assignment to alternative suppliers to "jump start" deregulation by overcoming "customer inertia."[7] "Value" became simply a buzzword without any content. As deregulation encountered problem after problem, finally, it was generally admitted by advocates that deregulation would not yield lower prices for low-income customers or for the residential sector. Instead, in any market there will be winners and losers.

About 23 US states tried out some form of "deregulation" of the social infrastructure, for provision of electricity and electricity related services. Today, the deregulation juggernaut has slowed to a crawl, with several states curtailing or reversing direction. The "cult" aura of deregulation has evaporated leaving its material effects unmasked and open to critical inspection. Only one state, Texas, is currently seriously hyping deregulation, and Texas was the last state to embrace the deregulation cycle. Elsewhere, even the minority of states that continue some form of deregulation are introducing more and more social planning and regulatory controls to limit damage.

Commissioners and Governors who were in place when deregulation was introduced are still speaking for it, but no longer loudly. As commissioners and governors are replaced by new people who are not personally tied to the market reforms, the approach is more objective. Staff members are now free to be openly analytical and skeptical. Many of even the large industrial proponents have been burned as actual markets have emerged that are quite different from the free market. It is now possible that states may introduce real evaluations of the experiments. For the low-income families, all low-income benefits of deregulation are neither market driven nor market related. If things had been thought through or if serious evaluation had been attached to deregulation experiments, the feedback could have limited the reform earlier. In general, if advocates of a reform either know they are creating a flim-flam or if they are zealots, they will not build in material evaluation. Leaving out evaluation is a sign of fear and bad faith. It means decoupling of social intelligence from social reform. To solve real problems, the focus, instead, should be on the problem (for example, secure energy at least cost with affordable rates), not on the means (deregulation).[8]

A CLOSER LOOK AT THE FREE MARKET ILLUSION

In Economics 101, we learn about a seemingly magical social institution called the "free market." The assumptions of the free market are:

(1) Ease of entry into production

(2) Price structure that faces all firms equally

(3) Easy factor mobility

(4) Equal access to information and technology

(5) No product differentiation

(6) Numerous producers so that none may exert market power

(7) Aggregation of suppliers, by collusion or gaming, is preventable

(8) As economic and political entities, buyers, workers, sellers, and owners of the means of production have roughly equal access to resources and are of roughly equal economic and political power.

Markets that meet all of these conditions actually can work wonderfully well. Such markets can encourage economic efficiency; insure that the production of goods and services are directed to consumer preferences, and lower prices. In a free market, profit serves as an incentive for productive effort, price is subjected to competitive stresses, and price is reduced to actual marginal cost as consumer demand is met, theoretically removing profit per unit to a value of nearly zero.

This section could have been called, "A Closer Look at the Free Market," but a quick review of the list of assumptions shows that only one is met in the deregulation market reform. The exception is the lack of product differentiation, which remains as true under market reform as it did under the planned and regulated system. Thus, from the start, the free market has been a promotional illusion masking the creation of very different goals.

(1) There is no easy entry to production. The illusion of multiple suppliers was created by intermediaries that purchased supply on the wholesale market and tried to bundle it while achieving a market advantage. It was

also created by utilities crossing each other's traditional service boundaries to offer service through proxy companies. Within five years, most of these companies withdrew to return to their home markets to focus on the core business.

(2) The price structure does not face all firms equally, and if it did would undercut market advantage. At several critical points, control of generation became important in controlling price.

(3) The factors of production are not highly mobile. In addition to the former costs of production under the planned and regulated system, public risk compensation has to be built in to encourage new generation. And, as noted in a study by NYSEG, the quantity of generation under the market reform has to be higher than generation under the planned and regulated system.[9]

(4) Equal access to information and technology has been roughly accomplished but poorly implemented. As in New York, the traditional distribution utility retains a significant advantage.

(5) Much effort has gone into attempts to create packages of energy and services based on characteristics of energy and service requirements. There are some niche markets, but for the most part these exercises have introduced nothing new. This effort has not affected the residential sector in any meaningful way and none of the packages created are dependent on competition. For example, Oregon created the packages without deregulating.

(6) Market power has been very evident since the beginning of deregulation in California. The total social cost of the exercise of market power as it affects California and the states around it remains equivalent to that of a major natural disaster, and even though the California experiment has been stopped the exaggeration of energy costs will carry far into the future.

(7) Aggregation of suppliers, by collusion or gaming, is so far a part of the system. In some jurisdictions this has not been a major problem while in others collusion and gaming have been major features of the market reforms. This aggregation on the part of suppliers is based on concentration and centralization across the previous jurisdictional companies and is a central feature of the market reform.

(8) It never, ever, passed a simple "straight face" test to say that "as economic and political entities, buyers, workers, sellers, and owners of the means of production have roughly equal access to resources and are of roughly equal economic and political power." For low-income customers, this failure is illustrated by the failure of aggregation to lower rates based on market forces. Where aggregation has worked it has been based on regulatory rules that create guided markets (such as Ohio's "opt-out" aggregation).

A CLOSER LOOK AT MARKET FAILURE

Market failure has a specific meaning in economic and policy analysis:

*Market failure...refers to the inability of a market or system of markets to provide goods and services either at all or in an economically optimal manner. Market failure is...defined exclusively in terms of economic efficiency in general and allocative efficiency in particular. ...[T]he market failure paradigm can be extended to include distributional or equity elements.... (*Wallis & Dollery, 1999, P.16)

When any one or more of these types of market failure occur, the ideal market of Economics 101 with its consumer friendly features is distorted - sometimes monstrously distorted.

Table 1. Types of Market Failure (Tailored to Energy Markets)

Type of Failure	Description
(1) Market not competitive	A market takes a monopolistic or an oligopolistic form, rather than the "free market" of many sellers and many buyers. For low-income families and for many residential customers the market reforms have not resulted in competitive markets.
(2) Externalities	Social costs are not captured by market prices. The market reforms exempt firms from carrying the full social costs of their economic activity. This is usually the secret advantage of markets over planning. Under regulation when the price of gas goes up dramatically, something basic has gone wrong. Under market pass through pricing for the commodity component of price, nothing is wrong and no one is responsible – it is just "the market price."
(3) Inability to Supply	"Public goods" entail non-excludable consumption and non-rival consumption. Low-income families need energy (non-excludable consumption) even across the market barrier of inability to pay.
(4) Incomplete markets	A market fails to serve some market sectors. Interruption of service is still a health and safety issue, even if caused by an inability to pay. Low-income customers drop out of traditional economic analysis unless they are provided with ability to pay.
(5) Incomplete information	A market tends toward poor choices. For low-income customers, the costs of search and increased insecurity are inappropriate when matched to the potential benefit of market reform.
(6) Business cycle failure	A market fails to supply during periods of recession or economic depression. Alert and energetic planning and regulation is required – right now – on this issue.
(7) Ethical failure	A market fails to promote equity of access and equity of results. An energy market that does not meet basic family and community needs is by definition a failure.

The seventh kind of market failure is of key importance for low-income families. It was a central feature of economic thought and government action from roughly the era of the Great Depression of the 1930s through the early 1970's. It incorporates responsibility for the social welfare of individuals, families, and the people as a collective in history as criteria for market failure.[10]

Failure of any one or more of these market requirements invalidates the "free market" theory, along with the "competitive market" political rhetoric used to promote deregulation. Note that none of the market reforms pass all of these tests except as a result of regulatory features that must be introduced to guide the markets.

THE TRAGEDY OF MISSION DISPLACEMENT

The basic fallacy of the deregulation experiments was to place "the market" at the level of a touchstone, such that, instead of maintaining and improving energy systems to serve the people with continuous supply at least cost and at affordable price, the goal became to protect and build markets. When stated clearly, one might wonder how, given the average level of human intelligence, such a visible mistake was possible. Yet people of good will can be induced to follow misguided and Quixotic missions if they have magical mystical faith that "markets are the (magical) answer" to all public needs.

At a psychological level, the "magical market" belief system amounts to a syndrome of rampant goal displacement[11] accompanied by strong denial. Denial evidenced, for example, by:

(1) Exclusion of critical evaluation since the beginning of the deregulation experiments,

(2) Consistent attempts to ignore the nearly universal lack of interest in "choice" over consistent supply at least cost and to cover the lack of public interest by the authoritarian doctrine and practice of "forced choice" to overcome "customer inertia," thus profound disrespecting the ordinary citizen.

(3) Failure to come to grips with the succession of failures of the experiments to approximate a free market, and by energetic attempts to ignore or treat each in succession as special circumstance.

(4) Failure to accept public accountability for the deep financial loss to all sectors of the public that has been produced by the experiments.

At a sociological or institutional level, the phenomenon is a particularly flagrant episode of "regulatory capture" - the capture and subversion of central regulatory institutions. The job of regulators is to regulate in the public interest, attempting to insure secure energy at least cost and at affordable rates. When regulators ignore core mission to favor the market mechanism over material mission, it is a tragic mistake.

State commissions (with the exception of Texas) have by and large come through this period of "mission amnesia." Currently, the states are moving substantially towards regaining regulatory health sufficient to advance the kinds of guided markets that are necessary to insure core missions are carried out in changing times. The Federal Energy Regulatory Commission (FERC) is the primary remaining example of victimization, subversion, and incapacitation of a central regulatory institution. Symbolically, this incapacitation is indicated in FERC's "vision statement," where the mission of "promoting competitive markets" is listed above "protecting customers," "respecting the environment," and "serving and safeguarding the public."[12]

The fallacy of the belief system that accompanies this "vision," is that if FERC promotes competitive markets, then all other problems - including the problem of serving diverse parts of the public having different and sometimes opposed interests - will be solved by the magic of the market! Of course, there is a residual truth in this belief. In fact, "promoting competitive markets" can be a reasonable activity in a narrowly situated context in which a free market might actually be possible. But that context would have to include "engineering in" of critical evaluation and ongoing market monitoring to provide timely information as to whether the market mechanism is working or not. But a market approach is just one tool from a large toolkit: A market approach is a tool or a mechanism rather than a mission. In contrast, the material mission of FERC is "protecting customers," "respecting the environment," and "serving and safeguarding the public." FERC's displacement of core mission by placing a single mechanism in place of the material mission of the agency results in service to the mechanism at the expense of the mission.13 FERC currently represents a case of unforgivable laziness in thinking through its "vision" along with a fundamental mistake in keeping priorities straight on "means" vs. "ends." The current FERC "vision" can only produce slothful and crippled regulation, rather than the vigorous regulation for guided markets that is required for customer protection, protection of the environment, and public service. The bottom line is that FERC will protect the market mechanism, not the material needs of the people. We need to remember the words of Bertrand Russell: "Rules of conduct, whatever they may be, are not sufficient to produce good results unless the ends sought are good." Displacement of ends in order to serve the market illusion will not lead to good results.

WHAT CAN BE DONE?

As discussed in this paper, some of the negotiated features of deregulation provide important consumer protections, including temporary rate caps, though in each case a regulatory benefit, not a market benefit! Rate caps are features of a guided market, and more features of a guided market are required next. Residential and low-income customers require much stronger guided markets. With the magical market era receding, along with dotcoms, globalization, and market bubbles, what can be done to help insure low-income customers receive fair treatment in a deregulated environment? Several things can be done.

(1) If there is more Deregulation. If any further attempts to deregulate occur, take advantage of any openings provided by deregulation to move towards guided markets. Deregulation has shown that it does not serve the interests of low-income or residential customers, except by regulatory actions that do not derive from the market. Severe damage has also occurred to institutional, public service, and small commercial customers as a result of deregulation experiments in some states. Even large commercial and industrial customers (who have benefited most from a shift in pricing in their favor) have been burned by deregulation in several instances.

The dysfunctional (actual) results of the deregulation experiments now substantially outweigh the (actual) benefits for most customers in all but the large industrial and large commercial sectors. Even in these sectors, although the prior rhetoric remains, results are sufficiently mixed that there is difficulty in reaching internal agreement or sustaining interest. Be ready to use the dysfunctional record created by the experiments to develop coalitions to turn any further deregulation experiments into guided markets with increased regulatory protections.

(2) Help insure Rules are Followed. In states that have experimented with deregulation (and "deregulation lite"), if there are new consumer protections or a reaffirmation of existing consumer protections in the deregulated environment, find out what they are and work with your state Office of Consumer Advocate and utilities to see that they are maintained and followed.

(3) As Rate Caps sunset, work for Affordability. Moving forward, the temporary rate caps adopted in several states in order to sweeten the deregulation pill did not come from market forces but from regulatory action. The rate caps have sunset provisions, and as they expire pent-up pressures from the deregulation era will find expression in dramatic rate rises. As these occur, be prepared to use this hidden outcome of deregulation (price shifting towards the out years) in negotiation. Be ready to work for observance of conservative pricing guidelines (for example, "no sudden movement in rates"), along with a vigorous extension of social pricing over cost-based pricing to insure affordability. In particular, work to insure that accountability for costs lies with actual parties and cannot be dodged by referring to "pass through" of market prices. The shock already experienced by low-income and residential customers by monthly pass through in certain months is dysfunctional enough to require an end to this part of the experiments.

(4) Restore Regulatory Power & work for Vigorously Guided Markets. If your state regulatory commission has committed partial regulatory suicide by placing "the market" over public necessity during the deregulation era, the regulatory function will have to be restored to vigorous health if the people are to be served. Market pricing may be appropriate as a residual method in carefully bounded sectors, but has no ethical application over social pricing or cost-based pricing in the low-income and residential sectors. The important thing is to move forward with vigor to insure secure energy supply at least cost with affordable rates. This will require vigorously guided markets.

(5) Work to renew Consensus on SBC. If there is a Social Benefit Fund that provides DSM/Demand Response and Low-Income payment assistance, try to insure that it is understood by all parties. Currently, for example, the Social Benefit Fund in Connecticut is being seized by the Governor for the General Fund in order to meet other pressing needs of the state during the current fiscal crisis. It is essential to work towards protection of the Social Benefit Funds by renewing agreements among all parties that these are to been seen not as simply a state tax on electricity, but as funds that belong to customers and are dedicated to service the needs of energy conservation and low-income families.

(6) Keep the SBC Overheads Low. If there is a Social Benefit Fund that provides weatherization and payment assistance to low-income families, try to insure that the overhead on the fund is reduced so that the funds actually go to the low-income families. The main factor that holds low-income programs in place is public agreement, even if that agreement is often primarily passive. Everything should be done to keep the programs conservatively run, with no appearance of a problem of either "free lunches" or self-dealing. In one state, for example, it costs about forty-four cents to deliver each dollar of payment assistance to a low-income family from the Social Benefit Fund, even though the supplementary program does not even require that a new form be filled out by caseworkers. The cost to deliver each dollar should be much lower.

(7) Be Straight with All Parties, including the Industrials. Try to insure that the Social Benefit Fund, if there is one, operates according to accepted accounting rules, is regularly audited, and does not contain exemptions from purchasing and contractual guidelines. It is important to remember that all parties, including those not currently "at the table" (such as the large industrials in many low-income matters) have to be shown respect. All procedures should be fully open and above board, with no appearance of possible collusion or self-dealing of any kind.

(8) Be Straight with Customers. Try to insure that the Social Benefit Fund appears as a line item on the customer bill, so that this cost is never a surprise to end-use customers. Put effort into helping non low-income customers understand what this item is, and why it needs their continuing support.

(9) Learn the Facts on what is happening to Income. Learn the facts about the allocation of income in your community and region and the way necessary family budgets no longer fit family incomes for about 40% to 50% of Americans. There are only three ways to solve the income problem: market wage (which will not work under globalization and free markets - market wage will be going continually down for the bottom 60% of Americans, and from those who have least most will be taken), transfer payments (a hard problem following Welfare Devolution, which has devastated the social welfare safety net), and reduction of bills to fit family incomes (possible for water, electricity, and natural gas; and necessary for companies because the income is not present to pay the bills anyway).

(10) Work to Restore Least-Cost Planning. Do what you can as the market reform era ends to promote establishment of least-cost utility planning (LCUP) and regulation for affordable energy.[14]

(11) Help the Utilities deal with Affordability. The fundamental feature of the market reform was neither the promised lower cost nor the promised customer choice - it is consolidation and centralization of companies across the previous jurisdictional franchises. It is now important not to "rock the boat" with further change, but to allow these companies to settle in to core business roles and act like utilities.

As they settle in, regulation has to be strengthened through coordinated central planning to insure continuity of service to low-income and payment troubled customers at rates that are affordable. Income inequality is increasing and the basic economics of open markets insure that lower-income families will do increasingly poorly and much of the middle income ranks will enter hard times. Companies, regulators, and advocacy groups need to think these problems through carefully, implement and test programs (to be sure they actually work and use each dollar wisely).

(12) Stay on Task. Focus on low-income families. Energy conservation, demand response, and environmental sustainability are related but often separable issues.

(13) Build-In Critical Evaluation, and Vigorous Monitoring. As you move forward to defend programs and introduce progressive reforms, test actual performance against specific promises within defined performance periods. If you are part of putting together a new program or experiment, build in critical third party independent evaluation and robust market monitoring. Just as with deregulation, any seemingly bright idea can be fundamentally flawed. Provision for critical independent evaluation and monitoring for feedback can correct problems of belief with material feedback. Be ready to try alternate approaches to solve the real problems of the customers, whether those approaches involve market or planning and regulation (or guided markets that require all three approaches). Keep your eyes on the goal of serving the people and meeting needs well from the customer's perspective.

The list of "what can be done" is essentially conservative, in the sense of conserving families and businesses as well as protecting investment. Moving towards explicit authorization and mandating of all state commissions to insure energy security at least cost and at affordable rates is necessary to insure the needs of families and working people. It is also the path that will provide the most stability and regularity of expectations for energy companies. The hallmark of this effort has to be openness and mutual accountability, with open planning and room for participation by all interested and affected parties. With strong regulation and much effort we can create guided markets that constrain the next Enron to the art of doing good and serving the public interest. Without these, we ask for more of the same.

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To get passed the hype on deregulation and to understand what is really happening, read first the study and update by Barbara Alexander (2001a,b). Next read the book by Greg Palest, Jerrold Oppenheim and Theo MacGregor (2003). Also see the monograph by Wasserman (1999). Together, these provide the information essential to understanding what is happening and how things fit together.

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FOOTNOTES

1 Peach, H. Gil, "Choice is Never Having to Say you are Sorry: How Deregulation is Working for Low-Income Programs," Paper presented to the 2003 National Low Income Energy Conference, Sacramento, June 2003. The paper has been revised and improved with input from conference participants.

2 Two terms are now used to refer to the same thing: deregulation and restructuring. Even advocates of deregulation have gradually shifted from "deregulation" to favor the term restructuring. Only a few years ago, "deregulation" was boldly advocated along with "dotcoms" and "globalization." In its original formulation, a dramatic cut back in regulatory authority and all forms of social planning (such as Demand Side Management and Least Cost Utility Planning) was to "unleash" the market. The market would then provide answers that would guarantee opportunities for high profit and insure lower prices, while improving customer service and providing "choice" and "value"! An innocent argument for deregulation based on the free market would not pass a straight-face test in most social circles today. The current and neutral term is "restructuring."

3 For the most competent analysis of the American system of public utility regulation, see Palast, Greg, Jerrold Oppenheim and Theo MacGregor, Democracy and Regulation, How the Public Can Govern Essential Services (2003). A key theme of this work is that "Trouble comes when regulators are enticed into believing that competitive markets, where none exists in reality, can substitute for public control (p. 30)." A fundamental insight is that "low-cost, high-quality service rests on a simple, two part formula we call Democratic Regulation: (1) Complete open public access to information; and (2) Full public participation in setting prices and standards of service (p. 1). Analysis that proceeds from this theme and insight are an excellent corrective to the purely technical treatment of regulation by many economists. The reality of what deregulation produces is in high contradiction to the theory of deregulation. For the best treatment, see the papers by Barabara R. Alexander, 2001a,b.

4 Thus qualifying the state for a small addition in LIHEAP leverage funds.

5 Craft standards, such logic diagrams and careful experimental and quasi-experimental designs were not used to pose critical questions of performance vs. the traditional regulatory model [as modified by inclusion of Demand Side Management (DSM) and Least Cost Utility Planning (LCUP)]. However, we have constructed logic models for evaluation of deregulation experiments and deregulation is so full of internal contradictions and claims that this step in itself - had the reform been carefully thought through and tested - would have in itself logically required early termination of most experiments. For designing evaluation for a deregulation experiment, see Peach & Mitchell, 2001a, b, and c.

6 The early deregulation movement worked to undermine Demand Side Management (DSM) and least cost utility planning (LCUP). Thus, for example, according to Vice President Cheney, “Conservation may be a sign of personal virtue, but it is not a sufficient basis for a sound, comprehensive energy policy.” This, in spite of the findings of a 3-year study on conservation by the national laboratories in which it was determined that aggressive federal conservation policies could reduce the growth of electricity demand through the year 2020 by 45.2% to a consumption level below that of 1997. See “U.S. Scientists See Big Power Savings From Conservation,” The New York Times, May 5, 2001.

7 Disruption of contractual relationships between customers and utilities through involuntary assignment to alternative suppliers is inherently authoritarian in nature. Both in its inherent nature and in its material results (disruption of actual choice in market behavior) “forced choice” exposes the free market illusion. This is the case for low-income families and for the wider class of residential energy users who suddenly started receiving bills from companies from which they had not agreed to purchase energy. To be sure, a handful of “forced choice” customers did prefer the new suppliers but for most families the experience was confusing, disrupting, and costly. The hassle factors of stress and insecurity alone should have caused market reformers to move to a higher ethical road. Thinking things through and looking at actual effects would have resulted in a very different type of market reform.

8 Both of these insights are from Donald Campbell, a central figure in evaluation research (see References). Campbell’s work on social reforms emphasizes the need to solve problems through hard measurement with critical feedback, and to keep the focus on the problem.

9 This necessary supply overcapacity to fulfill market requirements is termed by New York State Electric and Gas (NYSEG), as the Commercial Reserve (New York State Electric & Gas: 2001). Particularly for low-income and residential customers the alternative supplier has to have a special advantage to negotiate supply. On analysis, the special advantage turns out to be an artifact of market design rather than anything approximating the workings of a free market. Suppliers would be motivated to serve the low end markets if generation were substantially overbuilt.

10 We incorporate as market failure, from a common sense perspective, the understanding that “...the outcomes of competitive markets, even when they are efficient, may not be socially desirable or acceptable.” Samuelson & Nordhaus, 1998, P. 274.

11 That is, subversion of the goal of secure energy at least cost with affordable rates by the goal of trying to maintain the illusion of a competitive market (at high public cost) when there isn’t one. This is a classic type of error, mistaking the defense of a particular means of approach to a problem with the solution of a problem, as described by Campbell (Footnote 8). This matters it suppresses the public interest. Deregulation (as a means) has not only not solved problems, it has intensified core problems through unconscionable cost allocations deceptively attributed to “the market,” and through the “creative destruction” of the savings of investors and of the jobs and pensions of utility workers. These are bad enough outcomes to require stopping the experiments on practical or ethical grounds. But mistakes in this area also matter because in contrast to a fundamental assumption of economics, energy is not replaceable. Or, to put it another way, actual systems do not return to initial states following each cycle activity as they do in conventional economic diagrams. Every mistake takes place in a non-forgiving environment - the natural energy system depletes. We cannot, as a species, afford to be dumb in the energy area. See Deffeyes, Kenneth S., Hubbert’s Peak, The Impending World Oil Shortage. Princeton, New Jersey & Woodstock, Oxfordshire (UK): Princeton University Press, 2001; Geogescu-Roegen, Nicholas, The Entropy Law and Economic Process. Cambridge, Massachusetts & London (UK), 1971, 1999.

12 The “vision statement” can be found at the FERC website. If asked, FERC analysts will repeat this formula - FERC has decided that the other aspects of its mission are best accomplished through the competitive market. So, the core mission has to be approached through the market and the market must first be defended and maintained. This is the sense in which the agency has been captured and incapacitated from fulfilling its essential mission. It does sound like a grade B science fiction film or an early episode of the X-Files, but try it and see if you do not find the uniform parroting of the market mantra (“markets are the solution, they are the solution, they cannot be the problem”) rather than any form of critical intelligence regarding the costs of maintaining the fiction of the competitive market when it does not exist.

13 For example, if a team of homebuilders decided to stop in the middle of the job and condition any further work on the house on the ritual exaltation of screwdrivers (and not use their other tools), we would say they have abandoned their homebuilding mission and that they have been subverted by a screwdriver cult. This doesn’t mean that the screwdriver is not an important tool in the right context, but that the mission of homebuilders is to build homes, not to exalt screwdrivers.

14 For the development of the “least-cost” regulation model discussed in this section, see Hirsh (1999):132-223.